

1 XAVIER BECERRA  
Attorney General of California  
2 MARY CAIN-SIMON  
Supervising Deputy Attorney General  
3 CAROLYNE EVANS  
Deputy Attorney General  
4 State Bar No. 289206  
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5 San Francisco, CA 94102-7004  
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E-mail: Carolyn.Evans@doj.ca.gov  
7 Attorneys for Petitioner  
and Real Party in Interest

**FILED**  
San Francisco County Superior Court  
JUN 12 2019  
CLERK OF THE COURT  
By: [Signature] Deputy Clerk

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 **DEAN R. GRAFILO, DIRECTOR OF THE**  
12 **DEPARTMENT OF CONSUMER**  
13 **AFFAIRS, STATE OF CALIFORNIA,**

14 Plaintiff,

15 v.

16 **KAISER FOUNDATION**  
17 **HOSPITALS/THE PERMANENTE**  
18 **MEDICAL GROUP**

19 Respondent,

20 **KIMBERLY KIRCHMEYER,**  
21 **EXECUTIVE DIRECTOR, MEDICAL**  
22 **BOARD OF CALIFORNIA,**

Real Party in Interest.

Case No.

**CPF-19-516700**

**DECLARATION OF INVESTIGATOR**  
**MONICA PERETTO IN SUPPORT OF**  
**PETITION FOR ORDER TO SHOW**  
**CAUSE AND ORDER COMPELLING**  
**COMPLIANCE WITH**  
**INVESTIGATIONAL SUBPOENA**

Date:  
Time:  
Dept: 302  
Judge: Jon. Ethan P. Schulman  
Trial Date:  
Action Filed: June 12, 2019

23 I, MONICA PERETTO, declare that the following matters are true and correct:

24 1. I am an Investigator with the California Department of Consumer Affairs, Division of  
25 Investigation, Health Quality Investigation Unit (HQIU), which investigates complaints received  
26 by the Medical Board of California (Board) and obtains the evidence necessary to determine  
27  
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1 whether physicians are violating the Medical Practice Act and related laws relating to the practice  
2 of medicine.

3 2. In 2017, the Board received complaints that school-aged children were obtaining  
4 vaccination exemptions based upon medical conditions that did not appear to be valid.

5 3. On February 23, 2017, the Board received a complaint from the Assistant Chief of  
6 Pediatrics at Kaiser, Roseville, reporting that a Kaiser patient was given an inappropriate vaccine  
7 exemption letter by Dr. Mary Kelly Sutton. On March 28, 2017, the complainant submitted a  
8 copy of a vaccine exemption letter, which stated that the child was a patient of Dr. Sutton's and  
9 that the child was permanently exempted from all immunizations. Subsequently, the complainant  
10 provided nearly identical additional vaccine exemptions issued by Dr. Sutton to other school-  
11 aged children, including letters dated April 5, 2017, August 14, 2018, and October 12, 2018.

12 4. On February 15, 2019, I served an investigational subpoena on The Permanente  
13 Medical Group (TPMG). The subpoena required TPMG to provide unredacted copies of the  
14 exemptions, as well as information identifying any other Kaiser pediatric patients who received  
15 vaccine exemptions from Dr. Sutton, and their parents.

16 5. On April 4, 2019, counsel for TPMG advised that the subpoenaed information would  
17 be provided, if the Board first obtained a court order compelling its release.

18 6. On May 31, 2019, the complaint and vaccine exemptions were reviewed by James  
19 Nuovo, M.D., who is a medical consultant to the Board. Dr. Nuovo advised that there was  
20 insufficient evidence that Dr. Sutton performed a good faith evaluation of the children and that  
21 further investigation was necessary to determine whether or not Dr. Sutton was violating the laws  
22 relating to physicians and vaccine exemptions.

23 7. Attached to this declaration are true and correct copies of the following documents:

24 A. Complaint dated February 23, 2017 (redacted);  
25  
26  
27  
28

- 1 B. Vaccine exemption letters dated February 6, 2017, April 5, 2017, August 14, 2018,  
2 and October 12, 2018 (redacted);  
3 C. Investigational subpoena, dated March 10, 2019;  
4 D. Letter dated April 4, 2019 from attorney Tom Freeman.  
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6  
7 Executed under penalty of perjury on June 6, 2019, at Sacramento, California.  
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11 MONICA PERETTO  
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# ATTACHMENT A

## Online Complaint Summary

2/23/17 12:14 PM

Page 1 of 3

Board:

Medical Board of California

License Type:

Physician's and Surgeon's

Complaint Number:

8002017030405

Incident Date:

02/06/2017

## Description:

My name is Wendy Cerny and I am a Pediatrician at Kaiser Permanente in Roseville California. I'm the Assistant Chief at my clinic and one of my pediatricians brought to my attention that one of his new patients' mother requested that he sign a "Medical Exemption to Required Immunizations" form for her two children. She had already gotten an exemption form signed for the older child before coming to Kaiser, and wanted to get one for each of her two older children.

My colleague looked at the form she already had for the older child and saw that this doctor: Mary Kelly Sutton MD, had signed a form for [REDACTED] to have a lifelong medical exemption from all vaccines. She wrote on the form that the exemption was based on the child having "a personal history of genetic defect, neurologic vulnerability, and allergy, and family history of vaccine reaction, allergy, and neurologic and autoimmune disease". However, this patient actually does not have a history or family history of any of those things and he and his two younger siblings also don't in fact have a medical condition that would be an indication for exemption to being vaccinated. When my colleague told the mother he would not sign exemption forms for her two younger children as she asked, she replied that she would just go back to this office to obtain such exemptions.

My colleague and I looked at the website for this doctor: [vaccinecommonsense.com/category/doctors/dr-kelly-sutton](http://vaccinecommonsense.com/category/doctors/dr-kelly-sutton) and were very disturbed by it and the specials she runs on giving the exemptions at a low price. Exemptions are featured in the website.

We feel this doctor and perhaps her colleagues in this medical group (Raphael Medicine & Therapies PC) are making easy money on these exemptions that are not based on true medical need and are actually putting children and other people in the community at risk for contracting and spreading serious infectious diseases. As a pediatrician for over 18 years, I have seen an increase in people refusing vaccines for their children, and with doctors encouraging parents to not vaccinate, they are going against medical evidence and indirectly causing harm.

Respondent:

License Type:

Physician's and Surgeon's

First Name:

MaryKelly

Last Name:

Sutton

Address:

9801 Fair Oaks Blvd

Fair Oaks, CA

95628

US

Phone Number:

916-671-1780

Extension:

E-mail Address:

**Complainant**

First Name:

Wendy

Second Name:

Marie

Last Name:

Cerny

Gender:

F

Address:

1840 Sierra Gardens Dr

Roseville, CA

US

Phone Number:

916-787-6449

Extension:

E-mail Address:

wendy.m.cerny@kp.org

VR Home Enfile Application License Cash Exam Time Tracking Inspection Enforcement Report

FAQs/Links Help Sign Out

Complaint Search Change Recording License Type Delete Complaint Mass Activity Update Mass Discipline Update Mass Status Update Public Case Info

Domain 800 - Medical Board of California

dca-fp-88-r-02

Logged in as: mbscarv

VR Home > Complaint Search > Mainline Complaint > Case/Complaint - Web Submission - Additional Complaint Information > Case/Complaint - Web Submission - Additional Complaint Information Details

| Record Name       | Web Submission - Additional Complaint In                      | Status | Current |
|-------------------|---|--------|---------|
| ComplWithOthAgy   | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Agency Name       |   |        |         |
| Person Helping    |   |        |         |
| Phone Number      |   |        |         |
| Case Number       |   |        |         |
| ChildCustody?     | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| CourtAppointCC?   | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Joint Custody?    | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Attempt/Resolve   | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| If not, explain   |   |        |         |
| Treatment?        | n/e   |        |         |
| Dates of treatm   |   |        |         |
| Patient Name:     | Danyllak, David   |        |         |
| DOB               | 08/27/2017  |        |         |
| RelationPatient   | Assistant chief to pcg  |        |         |
| Substandard Car   | <input checked="" type="radio"/> Yes <input type="radio"/> No |        |         |
| Prescribing Iss   | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Unlicensed Prov   | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Sexual Miscondu   | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Impairment?       | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Conduct?          | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Office Practice   | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| Other             | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| If other, explain |   |        |         |
| ExmTribbyOther    | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| OthPrvdDils       |   |        |         |
| Legal Action Te   | <input type="radio"/> Yes <input checked="" type="radio"/> No |        |         |
| If so, date:      |   |        |         |
| Result:           |   |        |         |
| Desired Outcome   |   |        |         |
| WitName1          |   |        |         |
| WitTitle1         |   |        |         |
| WitPhnNum1        |   |        |         |
| WitBizPhnNum1     |   |        |         |
| WitAddress1       |   |        |         |
| WitName2          |   |        |         |
| WitTitle2         |   |        |         |
| WitPhnNum2        |   |        |         |
| WitBizPhnNum2     |   |        |         |
| WitAddress2       |   |        |         |
| WitName3          |   |        |         |
| WitTitle3         |   |        |         |
| WitPhnNum3        |   |        |         |
| WitBizPhnNum3     |   |        |         |
| WitAddress3       |   |        |         |

Updated Feb 23, 2017 12:14:44 PM By webuser

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| VR Home  | Entity           | Application | License | Cash   | Exam | Time Tracking | Inspection | Enforcement | Report | FAQs/Links     | Help | Sign Out              |             |                  |        |         |  |      |       |        |   |  |  |  |
|--|------------------|-------------|---------|--------|------|---------------|------------|-------------|--------|----------------|------|-----------------------|-------------|------------------|--------|---------|--|------|-------|--------|---|--|--|--|
| Complaint Search   Change Recording License Type   Delete Complaint   Mass Activity Update   Mass Discipline Update   Mass Status Update   Public Case Info  |                  |             |         |        |      |               |            |             |        |                |      |                       |             |                  |        |         |  |      |       |        |   |  |  |  |
| Domain 800 - Medical Board of California   |                  |             |         |        |      |               |            |             |        | dcs-fp-98-r-02 |      | Logged In as: mbscarv |             |                  |        |         |  |      |       |        |   |  |  |  |
| VR Home > Complaint Search > Maintain Complaint > Case/Complaint - Incident Address > Case/Complaint - Incident Address Details  |                  |             |         |        |      |               |            |             |        |                |      |                       |             |                  |        |         |  |      |       |        |   |  |  |  |
| <table border="1"><thead><tr><th>Record Name</th><th>Incident Address</th><th>Status</th><th>Current</th></tr></thead><tbody><tr><td colspan="4">Business Name MaryKelly Sutton MD<br/>Address Line 1 Raphael Medicine &amp; Therapies PC<br/>Address Line 2 9801 Fair Oaks Blvd #300<br/>City Fair Oaks<br/>State CA - California<br/>Zip 95628<br/>Phone Number 916-871-1780<br/>Hospital? <input type="radio"/> Yes <input checked="" type="radio"/> No<br/>Home <input type="radio"/> Yes <input checked="" type="radio"/> No<br/>Other <input checked="" type="radio"/> Yes <input type="radio"/> No<br/>Other medical outpatient clinic</td></tr><tr><td colspan="4">Updated Feb 23, 2017 12:14:44 PM By webuser</td></tr></tbody></table> |                  |             |         |        |      |               |            |             |        |                |      |                       | Record Name | Incident Address | Status | Current | Business Name MaryKelly Sutton MD<br>Address Line 1 Raphael Medicine & Therapies PC<br>Address Line 2 9801 Fair Oaks Blvd #300<br>City Fair Oaks<br>State CA - California<br>Zip 95628<br>Phone Number 916-871-1780<br>Hospital? <input type="radio"/> Yes <input checked="" type="radio"/> No<br>Home <input type="radio"/> Yes <input checked="" type="radio"/> No<br>Other <input checked="" type="radio"/> Yes <input type="radio"/> No<br>Other medical outpatient clinic |      |       |        | Updated Feb 23, 2017 12:14:44 PM By webuser |  |  |  |
| Record Name  | Incident Address | Status      | Current |        |      |               |            |             |        |                |      |                       |             |                  |        |         |  |      |       |        |   |  |  |  |
| Business Name MaryKelly Sutton MD<br>Address Line 1 Raphael Medicine & Therapies PC<br>Address Line 2 9801 Fair Oaks Blvd #300<br>City Fair Oaks<br>State CA - California<br>Zip 95628<br>Phone Number 916-871-1780<br>Hospital? <input type="radio"/> Yes <input checked="" type="radio"/> No<br>Home <input type="radio"/> Yes <input checked="" type="radio"/> No<br>Other <input checked="" type="radio"/> Yes <input type="radio"/> No<br>Other medical outpatient clinic   |                  |             |         |        |      |               |            |             |        |                |      |                       |             |                  |        |         |  |      |       |        |   |  |  |  |
| Updated Feb 23, 2017 12:14:44 PM By webuser  |                  |             |         |        |      |               |            |             |        |                |      |                       |             |                  |        |         |  |      |       |        |   |  |  |  |
| <table border="1"><tr><td>Save</td><td>OK</td><td>Cancel</td><td>Change</td><td>Delete</td><td>Back</td><td>Print</td><td>Export</td></tr></table>   |                  |             |         |        |      |               |            |             |        |                |      |                       | Save        | OK               | Cancel | Change  | Delete   | Back | Print | Export |   |  |  |  |
| Save   | OK               | Cancel      | Change  | Delete | Back | Print         | Export     |             |        |                |      |                       |             |                  |        |         |  |      |       |        |   |  |  |  |

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ATTACHMENT B

MaryKelly Sutton MD  
Raphael Medicine & Therapies PC  
9801 Fair Oaks Blvd #300  
Fair Oaks, California 95628  
Ph: (916) 671-1780 Fax: (916) 844-0083  
CA LICENSE # G076932

February 6, 2017

To whom it may concern:

My patient [REDACTED] is medically exempt from all vaccines on a permanent basis, due to personal history of genetic defect, neurologic vulnerability, and allergy, and family history of vaccine reaction, allergy, and neurologic and autoimmune disease.

This includes vaccination against diphtheria, hepatitis B, hemophilus influenza type B, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, varicella, pneumococcus, meningococcus, flu and human papilloma virus. The exemption is for all vaccines including those not mentioned here. Vaccination constitutes a greater risk than benefit for this individual.

Sincerely,



M. Kelly Sutton MD

### **CONFIDENTIALITY NOTICE TO THE SCHOOL**

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record.

**Raphael Medicine & Therapies**

# Medical Exemption to Required Immunizations

Optional Form for Licensed Physicians (MD or DO only)

|                                    |               |
|------------------------------------|---------------|
| STUDENT NAME (Last, First, Middle) | DATE OF BIRTH |
| [REDACTED]                         | [REDACTED]    |

## Exemption Due to Physical Condition or Medical Circumstance

I certify that the child has a physical condition or medical circumstance such that immunization otherwise required for admission to school, child care center, day nursery, nursery school, family day care home, or development center in California is not considered safe. I understand that, for the protection of the child and other students, the child may be excluded from attending school for prolonged periods during outbreaks or exposure to disease for which immunization has not been completed. (17 CCR §6060).

## Immunizations Included in Exemption:

| Immunization                                    | Duration of physical condition or medical circumstance   |
|---|--|
| <input checked="" type="checkbox"/> Polio       | <input type="checkbox"/> Temporary until date: _____ <input checked="" type="checkbox"/> Permanent |
| <input checked="" type="checkbox"/> DTaP        | <input type="checkbox"/> Temporary until date: _____ <input checked="" type="checkbox"/> Permanent |
| <input checked="" type="checkbox"/> MMR         | <input type="checkbox"/> Temporary until date: _____ <input checked="" type="checkbox"/> Permanent |
| <input checked="" type="checkbox"/> Hib         | <input type="checkbox"/> Temporary until date: _____ <input checked="" type="checkbox"/> Permanent |
| <input checked="" type="checkbox"/> Hepatitis B | <input type="checkbox"/> Temporary until date: _____ <input checked="" type="checkbox"/> Permanent |
| <input checked="" type="checkbox"/> Varicella   | <input type="checkbox"/> Temporary until date: _____ <input checked="" type="checkbox"/> Permanent |
| <input checked="" type="checkbox"/> Tdap        | <input type="checkbox"/> Temporary until date: _____ <input checked="" type="checkbox"/> Permanent |

## Comments or additional information:

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Right and Privacy Act (FERPA). Further, pursuant to Ca. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) do(es) not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record.

Licensed physician's name, address, and telephone number.

Raphael Medicine & Therapies PC  
9801 Fair Oaks Blvd., Suite 300  
Fair Oaks, CA 95628  
916-671-1780

Signature: M K Sutton MD/DO

License Number: G76932

Date: 2/6/17

American Academy of Pediatrics  
DEDICATED TO THE HEALTH OF ALL CHILDREN®  
American Academy of Pediatrics, California



CALIFORNIA ACADEMY OF  
FAMILY PHYSICIANS  
STRONG MEDICINE FOR CALIFORNIA

*MaryKelly Sutton MD*

*Raphael Medicine & Therapies PC*

9801 Fair Oaks Blvd #300 Fair Oaks, California 95628

Ph: (916) 671-1780 Fax: (916) 844-0083 CA LICENSE # G076932

October 12, 2018

To whom it may concern:

My patient [REDACTED] is medically exempt from all vaccines for six months (until April 12, 2019) due to personal history of neurologic disorder and suspected vaccine reaction, and family history of suspected vaccine reaction, allergy, and autoimmune and neurologic disease.

This includes vaccination against diphtheria, hepatitis B, hemophilus influenza type B, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, varicella, pneumococcus, meningococcus, flu and human papilloma virus. The exemption is for all vaccines including those not mentioned here. Vaccination constitutes a greater risk than benefit for this individual.

Sincerely,

*MK Sutton MD*

M. Kelly Sutton MD

**CONFIDENTIALITY NOTICE TO THE SCHOOL**

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record.

**RAPHAEL MEDICINE & THERAPIES PC**

MaryKelly Sutton MD  
Raphael Medicine & Therapies PC  
9801 Fair Oaks Blvd #300  
Fair Oaks, California 95628  
Ph: (916) 671-1780 Fax: (916) 844-0083  
CA LICENSE # G076932

April 5, 2017

To whom it may concern:

My patient [REDACTED] is medically exempt from all vaccines on a permanent basis, due to personal history of genetic defect and allergy, and family history of allergy, neurologic disease, and suspected vaccine reaction.

This includes vaccination against diphtheria, hepatitis B, hemophilus influenza type B, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, varicella, pneumococcus, meningococcus, flu and human papilloma virus. The exemption is for all vaccines including those not mentioned here. Vaccination constitutes a greater risk than benefit for this individual.

Sincerely,

*MK Sutton MD*

M. Kelly Sutton MD

### CONFIDENTIALITY NOTICE TO THE SCHOOL

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this child's guardian(s) does not consent to outside sharing or 3rd party sharing of the child's vaccination or exemption record.

**CONFIDENTIAL**

Raphael Medicine & Therapies

Name: [REDACTED]  
MRN: 1922023 DOB: 2/2/2013  
Dept: ROS-PEDC > SIERRA GARD  
Prov: CHOU, STEVE HUANG (M.D.)  
Appt Date: 9/5/2018 ProvID: 63440



*MaryKelly Sutton MD*

*Raphael Medicine & Therapies PC*

9801 Fair Oaks Blvd #300 Fair Oaks, California 95628

Ph: (916) 671-1780 Fax: (916) 844-0083 CA LICENSE # G076932

August 14, 2018

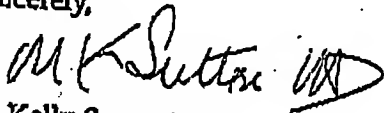
To whom it may concern:

**CONFIDENTIAL**

My patient [REDACTED] is medically exempt from all vaccines on a permanent basis due to personal history of genetic defect and allergy, and family history of allergy, autoimmune and neurologic disease, and suspected vaccine reaction.

This includes vaccination against diphtheria, hepatitis B, hemophilus influenza type B, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, varicella, pneumococcus, meningococcus, flu and human papilloma virus. The exemption is for all vaccines including those not mentioned here. Vaccination constitutes a greater risk than benefit for this individual.

Sincerely,



M. Kelly Sutton MD

**CONFIDENTIALITY NOTICE TO THE SCHOOL**

This document is a private and confidential record of the patient/student named above. This document is protected from disclosure by applicable laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA). Further, pursuant to Cal. Health & Safety Code section 120440 and other applicable student/patient privacy laws, this patient / parent does not consent to outside sharing or 3rd party sharing of the patient/student's vaccination or exemption record.

**RAPHAEL MEDICINE & THERAPIES PC**

ATTACHMENT C



**DIVISION OF INVESTIGATION  
HEALTH QUALITY INVESTIGATION  
DECLARATION OF SERVICE**

Case Name: Sutton, Mary, MD

Case No: 8002017030405

I declare that I am employed by the Division of Investigation in the County of Sacramento, California. I am over the age of eighteen years, and my business address is:

2535 Capitol Oaks Drive, Suite 220, Sacramento, CA 95833

On 2/15/19, I served the attached (indicate all that apply):

- ☐ Letter to patient Requesting Medical Release (ENF-20A) with Consumer Information About Release of Medical Information (ENF 21)
- ☐ Letter to patient Re: Subpoena for Medical Records with Notice to Consumer and Objection (ENF-20B) and copy of Investigational Subpoena Duces Tecum
- ☐ Letter to patient advising DOI has received their medical records (ENF-20C) (includes ENF-20C Attachment – *Consumer Information about Release of Medical Records in Possession of DOI*)
- ☐ Authorization for Release of Medical Information (ENF-27A)
- ☐ Authorization for Release of Alcohol and Drug Abuse Information (ENF-27B)
- ☐ Authorization for Release of Psychiatric Information (ENF-27C)
- ☐ Authorization for Release of HIV/AIDS Medical Information (ENF-27D)

- ☐ Medical Records Request Compliance Advisory (ENF-31)
- ☒ Declaration of Custodian of Records (ENF-22)

- ☒ Investigational Subpoena Duces Tecum
- ☐ Investigational Subpoena to Appear and Testify
- ☐ Administrative Hearing Subpoena
- ☐ Other (list):

☒ By <sup>EMAIL</sup> personal delivery and service of a true copy thereof to ZENNIE COUGHLIN at the following address: ZENNIE.COUGHLIN@KP.ORG

☐ By placing a true copy thereof, along with a cover letter, a copy of which is also attached, Enclosed in a sealed envelope with postage fully prepaid, by Certified Mail, in the United States mail at \_\_\_\_\_, California, to \_\_\_\_\_

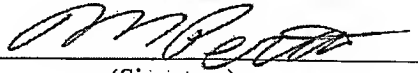
At the last known address. Certified Mail No.: \_\_\_\_\_

☐ Courtesy copy to: \_\_\_\_\_

I declare under penalty of perjury the foregoing is true and correct, and this declaration was executed at

Sacramento \_\_\_\_\_, California, on 2/15/19

Monica Peretto  
(Printed Name)

  
(Signature)



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR GAVIN NEWSOM

**DIVISION OF INVESTIGATION**

Health Quality Investigation Unit  
2535 Capitol Oaks Drive, Suite 220  
Sacramento, CA 95833  
Phone: (916) 263-2585 - Fax: (916) 263-2591



**RECORDS REQUEST COMPLIANCE ADVISORY**

February 15, 2019

The Permanente Medical Group  
Legal Department  
1950 Franklin Street, 17<sup>th</sup> Floor  
Oakland, CA 94612  
ATTN: Zennie Coughlin

Dear Ms. Coughlin,

The Division of Investigation is a regulatory law enforcement agency requesting documentation for confidential review. In accordance with the enclosed Investigational Subpoena Duces Tecum, please forward a certified copy of the complete requested documentation, to my attention at the above address by March 18, 2019. Please complete the Declaration of Custodian of Records and return it with the complete documentation.

If you have any questions regarding this request, please contact me at (916) 263-2529, in time to ensure receipt of the complete records prior to the due date listed above. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Monica Peretto'.

Monica Peretto  
Senior Investigator  
8002017030405

Enclosures: Investigational Subpoena Duces Tecum  
Declaration of Custodian of Records  
Notice and Acknowledgement of Investigational Subpoena

1                                   **BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS**  
2                                   **STATE OF CALIFORNIA**

3  
4   In the Matter of the Investigation of:                                   )  
5   Sutton, Mary K., M.D.   )  
6   Case Number 8002017030405   )  
7   To: The Permanente Medical Group                                       )  
8       Legal Department   )  
9       Zennie Coughlin   )  
10      1950 Franklin Street, 17<sup>th</sup> Floor                                     )  
11      Oakland, CA 94612

12  
13       This subpoena duces tecum is issued pursuant to the powers conferred upon the Director of the  
14   Department of Consumer Affairs (DCA) of the State of California as head of the DCA by Sections  
15   11180 through 11191 of the Government Code of California, which powers have been delegated by  
16   the Director under Section 7 of the Government Code to Supervising Investigator II Andrew Hegelein  
17   of DCA's Division of Investigation, Health Quality Investigation Unit. Pursuant to the federal Health  
18   Insurance Portability and Accountability Act (HIPAA), a covered entity is permitted to release  
19   protected health information and records to DCA because DCA is a health oversight agency under  
20   HIPAA. (45 C.F.R. § 164.512.)

21       **YOU ARE HEREBY COMMANDED** to appear before Investigator Monica Peretto and/or  
22   any other duly authorized representative(s) of the Division of Investigation, Health Quality  
23   Investigation Unit staff, at 2535 Capitol Oaks Drive, Suite 220, Sacramento, California 95833,  
24   telephone number (916) 263-2529 on the 18<sup>TH</sup> day of MARCH, 2019,  
25   at the hour of 8:00 a.m., then and there to testify and to answer questions propounded to you in  
26   connection with the above titled investigation and to bring with you, and there produce, any and all  
27   writings as defined by Evidence Code section 250, including but not limited to, all the papers, books,  
28   accounts, documents and records described in **the attached list**, regardless of the form in which they  
are kept, and including all electronic or digital forms of records.

1 For purposes of this subpoena, all references to records and documentation includes, but is not  
2 limited to, production of minutes, notes, electronic communications, audio and video recordings,  
3 reports, findings, recommendations or evaluations, taken during any formal or informal conferences,  
4 discussions or meetings.

5 For failure to comply with the commands of this subpoena, you will be subject to the  
6 proceedings and penalties provided by law.


7 **NOTICE: If you confirm with the above named investigator** that the specific papers and  
8 documents commanded in this subpoena duces tecum, including a **certified copy** of the records and a  
9 completed "Declaration of Custodian of Records," are being **delivered** to the address listed above,  
10 then you **DO NOT** need to appear. If the records produced are not certified, you must personally  
11 appear on the date and time indicated. If this subpoena requires production of a consumer's records  
12 (including a patient's or employee's records):

13 (1) **The records are to be produced by the date and time specified in this subpoena**  
14 **(but not sooner than 20 days after the issuance of this subpoena, or 15 days after**  
15 **service, whichever date is later).**

16 (2) If the identity of a consumer whose records are being compelled is known to the  
17 Division of Investigation, we have attempted to obtain a signed authorization for the  
18 release of the consumer records. At the time this subpoena is served, we are  
19 attempting to notify the consumer of our efforts to obtain their records through  
20 service of this subpoena. A copy of the Notice to Consumer, and a proof of service  
21 of that notice, are being provided with service of this subpoena.

22 If you have any questions, contact the above named investigator.

23 Given under my hand this 14<sup>th</sup> day of February, 2019.

24  
25   
26 Andrew Hegelein  
27 Supervising Investigator II  
28 Department of Consumer Affairs  
Division of Investigation  
Health Quality Investigation Unit

ATTACHMENT A1

SUBPOENA FOR INFORMATION

Regarding the investigation of Mary Sutton, M.D., the following documents related to the above entitled investigation:

1. All submitted immunization exemption letters composed and/ or issued by Dr. Mary Sutton or Raphael Medicine and Therapies PC;
2. Full entity identity and contact information for those who were issued an immunization exemption letter by Dr. Mary Sutton or Raphael Medicine and Therapies PC, including but not limited to: name, date of birth, legal guardian, residential address, phone number for the following Kaiser Pediatric patients: [REDACTED] [REDACTED], [REDACTED]
3. Full entity/guardian identity and contact information for the prior listed Kaiser Pediatric patients, including but not limited to: name, date of birth, residential address, phone number;
4. Any and all documents related to immunization exemption letters composed and/or issued by Dr. Mary Sutton or Raphael Medicine and Therapies PC.



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR  
**DIVISION OF INVESTIGATION**  
Health Quality Investigation Unit  
Sacramento Field Office  
2535 Capitol Oaks Dr., Ste. 220  
Sacramento, CA 95833  
(916) 263-2585 Fax (916) 263-2591



Patient: \_\_\_\_\_ Record No.: \_\_\_\_\_  
Business Facility: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_

### CERTIFICATION OF RECORDS

To the best of my knowledge, the copied documents, records and other things enclosed herewith were and are prepared and maintained in the ordinary course of business by authorized persons or personnel of this business or facility at or near the time of the acts, conditions or events described by such records. The enclosed records of the business or facility are a true copy of the following records described in the patient authorization or subpoena duces tecum (check only one):

- ☐ the complete records consisting of \_\_\_\_\_ pages;
- ☐ the complete records for the period beginning \_\_\_\_\_ and ending \_\_\_\_\_ only, consisting of \_\_\_\_\_ pages;
- ☐ the completed records, except that the business or facility does not have the following:  
\_\_\_\_\_

The copied records consist of \_\_\_\_\_ pages.

### CERTIFICATION OF NO RECORDS

- ☐ A thorough search of our files carried out under my direction and control revealed that this business or facility does not have the records described in the patient authorization or the subpoena duces tecum.

### DECLARATION OF CUSTODIAN OF RECORDS

I, the undersigned, am the duly authorized Custodian of Records of the above named business or facility. I am familiar with the mode of preparation of, and have the authority to certify, the business or facility records. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NOTICE:** A licensee that fails to provide the *certified* medical records within 15 days, or a health care facility within 30 days, of receipt of a request for certified medical records may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in a civil penalty of \$1,000 per day for each day that the documents have not been produced. "Certified medical records" is defined as "a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board."

DOI CASE NO. 8002017030405

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**BEFORE THE DIVISION OF INVESTIGATION  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the matter of the Investigation of:

Mary Suttton, MD

Case Number 8002017030405

To: The Permanente Medical Group

Legal Department

1950 Franklin Street, 17<sup>th</sup> Floor

Oakland, CA 94612

ATTN: Zennie Coughlin

**NOTICE AND  
ACKNOWLEDGEMENT OF  
INVESTIGATIONAL SUBPOENA**

**NOTICE**

This Investigational Subpoena Duces Tecum is served pursuant to California Government Code §11184 and Code of Civil Procedure §415.30. Failure to complete this form and return it to the sender within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a subpoena upon you in any other manner permitted by law. If you are served on behalf of a corporation, unincorporated association (including a partnership) or other entity, this form must be signed in the name of such entity by you or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of a subpoena. Section 415.30 provides that this subpoena is deemed served on the date of execution of an acknowledgment of receipt of subpoena.

Dated: February 15, 2019

**ACKNOWLEDGMENT OF RECEIPT**

This acknowledges receipt on \_\_\_\_\_, 20\_\_\_\_ of a copy of the  
investigational subpoena.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

BEFORE THE DIVISION OF INVESTIGATION  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the matter of the Investigation of:

Mary Sutton, MD

Case Number 8002017030405

To: The Permanente Medical Group

Legal Department

1950 Franklin Street, 17<sup>th</sup> Floor

Oakland, CA 94612

ATTN: Zennie Coughlin

NOTICE AND  
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Dated: February 15, 2019

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt on April 1, 2019 of a copy of the  
investigational subpoena.

Zennie Coughlin  
Signature

Zennie Coughlin  
Printed Name



**ATTACHMENT D**

# Marion's Inn LLP

Mark Palley  
Thomas M. Freeman  
Yvonne M. Pierrou

Latham Square  
1611 Telegraph Ave., Suite 707  
Oakland, California 94612-2145  
www.marionsinn.com

Telephone  
(510) 451-6770

Facsimile  
(510) 451-1711

Denise Ngo  
John A. Newton

April 4, 2019

RECEIVED

APR 08 2019

DOI / HQIU  
SACRAMENTO

Ms. Monica Peretto  
Division of Investigation  
Health Quality Investigation Unit  
2535 Capitol Oaks Drive, Suite 220  
Sacramento, CA 95833

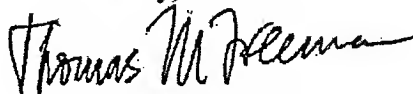
BY U.S. MAIL

RE: *In the matter of the investigation of: Mary Sutton*  
Before The Department of Consumer Affairs Case No. 8002017030405

Dear Ms. Peretto,

I am attaching the response from The Permanente Medical Group, Inc. to the investigational subpoena recently served on [REDACTED] of the Permanente Medical Group, Inc. Our client is prepared to provide the names and the other information of its patients, as requested in the subpoena, if ordered to do so by a court and our client is prepared to stipulate to the issuance of such an order. Accordingly, please see the Response from TPMG to the SDT, and a draft stipulation and draft order for your consideration. Please feel free to call me or Denise Ngo if you have any questions. Thank you.

Sincerely,



Thomas M. Freeman